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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER JOHN SHUMEY,

Defendant and Appellant.

2d Crim. No. B248364
(Super. Ct. No. F465096)
(San Luis Obispo County)

Christopher John Shumey appeals a judgment following conviction of second degree murder, and assault with a firearm upon a police officer, with a finding that he personally and intentionally discharged a firearm during commission of the crimes. (Pen. Code, §§ 187, subd. (a), 189, 245, subd. (d)(1), 12022.53, subds. (c) & (d).)¹ We conclude that sufficient evidence supports the jury finding that Shumey was legally sane at the time he committed the crimes, and affirm. (*People v. Elmore* (2014) 59 Cal.4th 121, 140 ["Under [California law] insanity is established if the defendant was unable either to understand the nature and quality of the criminal act, or to distinguish right from wrong when the act was committed"].)

¹ All further statutory references are to the Penal Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

On September 17, 2011, Heather Stewart lived in a downstairs apartment in an apartment building on Beach Street in San Luis Obispo. Shumey lived in an upstairs apartment directly above Stewart's apartment.

Early that afternoon, Stewart and her boyfriend, Richard Padgett, heard a "loud thump" that caused the smoke detector to fall from the ceiling of Stewart's apartment. They walked upstairs to Shumey's apartment to investigate. His apartment door was ajar and his apartment was "very messy." In response to their concerns, Shumey stated that he and his mother had a "heated discussion" and "something had been thrown across the room." Reassured that the argument was over, Padgett shook hands with Shumey and "everything seemed pretty square."

Stewart and Padgett later saw Shumey's mother, Karen Shumey, leave the apartment building and drive away. Shortly thereafter, however, Mrs. Shumey returned.

As Mrs. Shumey approached the door to her son's apartment, he fired a 12-gauge shotgun at her twice; the first shot passed through her lower back and abdomen and the second passed through her skull as she kneeled or squatted with her hands near her face. The first shotgun wound could have been treated successfully with immediate medical care, but the second wound destroyed her skull and was immediately fatal.

At 2:30 p.m. that afternoon, San Luis Obispo Police Officers Eric Lincoln and Brent Inglehart separately responded to a dispatch report regarding "two shots heard and a woman screaming." When the officers parked their patrol vehicles, Shumey shot the shotgun in their direction. The officers then retrieved their patrol rifles and took cover behind a nearby building.

Inglehart called out to Shumey to "[d]rop the rifle and come out." Shumey responded that he had shot his mother and that he could not kill himself, but wanted the officers to shoot him. Following five minutes of "back and forth" regarding surrender, Shumey broke the glass of his apartment window, threw his shotgun outside, jumped from the window, and surrendered. Lincoln then handcuffed Shumey and placed him inside a patrol vehicle.

Shumey informed Lincoln that he had shot his mother but did not know why. Shumey also stated that he wanted to leave the area ("I just need to get outta here. Hey Lincoln, let's go.") and did not want to speak to his father who had just arrived at the apartment building. At the police department, Shumey twice affirmed that he would not commit suicide in his cell. Shumey's statements were video recorded, including those made in the patrol vehicle, and played at trial.

Following his arrest and advisement of rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, 444, San Luis Obispo police detectives interviewed Shumey in a videotaped interview. Shumey admitted that he and his mother argued when she arrived unexpectedly at his apartment. Shumey pushed her, threw some household items, and overturned a coffee table. He then asked his mother to leave the apartment for 20 minutes and suggested that they would pretend the argument did not occur. Mrs. Shumey agreed and left the apartment.

Afterwards, Shumey retrieved a shotgun and thought of suicide, but he could not bring himself to pull the trigger. When his mother returned, he shot her through the door because he "wanted something to die" and "wanted her to die." After she screamed, Shumey opened the door and shot her in the head "to finish it." He acknowledged that it was his mother that he shot and explained that he was angry with his parents because they stayed too close to him. Shumey added that he would have shot his father had he been there, but not his downstairs neighbor, Heather Stewart. When asked if he knew that shooting his mother was wrong, Shumey stated: "I must somewhere know, but I didn't care" and "I knew what I was doing." He also stated that he had not consumed his antipsychotic medication that day, had been suicidal, and in the aftermath of his mother's death, did not "deserve to . . . be eating . . . or being very comfortable."

Shumey also admitted that he reloaded the shotgun and fired at the arriving police officers. He explained that he aimed low, at the patrol vehicle, because he did not intend to hurt the officers, only to engage them so that they would kill him.

Shumey informed the detectives that he suffers from schizoaffective and bipolar disorders, had attempted suicide and was confined recently in a mental hospital, and consumes prescribed psychotropic medications. He stated that he had not consumed his medications on the day of the shooting and had consumed only some medications the previous day.

At trial, the prosecutor played the videotape recording of Shumey's police interview.

Following a search of Shumey's apartment, police officers found letters addressed to celebrities as well as Shumey's statement, partially written in dried blood, declaring that he would commit suicide on September 13, 2011.

Evidence Presented Regarding Sanity

Doctor James Moghtader

In 1999, Shumey began to experience visual and auditory hallucinations and was hospitalized and treated with antipsychotic medications. In June 1999, psychiatrist James Moghtader diagnosed Shumey as suffering from schizoaffective disorder. Moghtader prescribed various antipsychotic medications and treated Shumey through September 2011. For many years, Shumey "function[ed] reasonably well," working at a job and living alone.

In August 2011, Shumey contacted Moghtader and requested medication or hospitalization due to his auditory and visual hallucinations and violent suicidal thoughts. Subsequently, Shumey was hospitalized and received additional antipsychotic medications. The hospital discharged Shumey on September 2, 2011; Moghtader treated Shumey again on September 6, 2011, and September 15, 2011.

Based upon a hypothetical question, Moghtader opined that Shumey was legally insane at the time he shot his mother, considering his active psychosis, lack of sleep, and failure to take prescribed medications. Moghtader also stated that Shumey would decompensate very quickly and manifest "instability" by not adhering to his medication regimen.

Shumey Family Members

Shumey's brother testified that Shumey fell into "a downward spiral" when he did not consume his prescribed antipsychotic medications. At times, Shumey described hearing voices or experiencing daydreams that precluded him from engaging in social interactions. Shumey's father testified that in mid-2011, his son's mental condition was "taking a turn for the worse" and "starting to spiral down."

Expert Witnesses

The defense presented testimony from three psychologists and the prosecution presented testimony from two psychologists and a psychiatrist regarding Shumey's sanity at the time he committed the crimes. Generally, the expert witnesses reviewed police reports of the incident, Shumey's mental health and medical records, Shumey's recorded police interviews, and the other expert witness evaluations (collectively, "relevant information"). Doctors Robert Halon, Thomas Middleton, and Carolyn Murphy opined that Shumey was legally insane; Doctors Kris Mohandie, Brandi Matthews, and David Fennell opined that he was not legally insane.

Doctor Robert Halon

Psychologist Robert Halon reviewed the relevant information and also interviewed Shumey and his family members for many hours. Halon opined that Shumey was legally insane when he shot his mother because he did not understand the nature and quality of his act and did not know whether his act was right or wrong. Halon concluded that Shumey "was acting essentially automatically in the throes of a profound psychotic disturbance" that he described as a "psychotic rageful storm." Halon also opined that symbolically, by "killing his mother, [Shumey] was killing himself."

In support of his conclusion, Halon relied upon a second police interview with Shumey conducted on September 20, 2011, after he had received several days of

antipsychotic medications.² During the interview, Shumey cried when he realized that he killed his mother because "on the medication . . . the emotion is hitting him."

Doctor Thomas Middleton

Psychologist Thomas Middleton also reviewed the relevant information to form his expert opinion. He opined that Shumey was legally insane at the time of the shooting because he was not "in touch with reality due to hallucinations and delusions and dissociative symptoms." Middleton described Shumey's acts as "a suicidal gesture, not a homicidal gesture." In forming his opinion, Middleton contrasted Shumey's statements and behavior during the first and second police interviews.

Doctor Carolyn Murphy

Clinical psychologist Carolyn Murphy reviewed the relevant information and also interviewed Shumey on two occasions. She opined that his schizoaffective disorder rendered him legally insane at the time of the shooting. Murphy believed that Shumey was in an "alternate reality" when he shot his mother, caused in part by his failure to consume his antipsychotic medications that day.

Expert Witnesses - Prosecution

Doctor Kris Mohandie

Psychologist Kris Mohandie reviewed the relevant information, administered a psychological test to Shumey, and also interviewed him. Mohandie concluded that Shumey suffers from a bipolar mental illness, but that he was malingering and exaggerating his symptoms during the testing. Mohandie opined that Shumey was legally sane at the time he shot his mother. He pointed out that Shumey recalled the event, recognized that he killed his mother, fired his weapon not to kill the police officers but to engage them, and asked to be removed from the crime scene so that his father could not speak to him.

² The trial court denied the defense request to admit the recording of the second police interview into evidence. (See argument at I., *post.*)

Doctor Brandi Matthews

Forensic psychologist Brandi Matthews reviewed the relevant information and also interviewed Shumey. Shumey stated that his parents were loving and supportive, but "controlling" due to his mental illness. Matthews relied upon Shumey's statements to police officers to opine that he understood the nature and quality of his acts in shooting his mother, and knew that his acts were wrong.

Doctor David Fennell

Psychiatrist David Fennell reviewed the relevant information and also interviewed Shumey for approximately 90 minutes. Fennell testified that Shumey displayed a clear memory of shooting his mother and shooting at police officers. He opined that Shumey was not legally insane and was not in a dissociative state at the time of the shooting. Fennell also relied upon Shumey's statements that he would not have shot his neighbor and that he wanted to leave the neighborhood following the shooting to avoid interaction with his father.

Fennell also testified that shortly after his arrest, Shumey's blood tests revealed sub-therapeutic levels of his antipsychotic medication. Fennell concluded that Shumey must have consumed some of his medication on September 17, 2011.

Conviction and Sentencing

The jury convicted Shumey of second degree murder and assault with a firearm upon a police officer. (§§ 187, subd. (a), 189, 245, subd. (d)(1).) It also found that he personally and intentionally discharged a firearm during commission of the crimes. (§ 12022.53, subds. (c) & (d).) The jury then determined that Shumey was legally sane when he committed the charged crimes. (§ 1026, subd. (a).)

The trial court sentenced Shumey to an indeterminate term of 40 years to life, consisting of 15 years to life for the murder and 25 years to life for personal firearm use causing death. The court imposed a six-year term for assault upon a police officer, to be served concurrently, and stayed the personal firearm use allegation regarding that count. The court imposed a \$5,000 restitution fine, a \$5,000 parole revocation restitution fine, a \$40 court security assessment, and a \$30 criminal conviction assessment, ordered

restitution, and awarded Shumey 566 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Shumey appeals and contends that: 1) the trial court erred by excluding evidence of his second (September 20, 2011) police interview; and 2) there is insufficient evidence that he was legally sane at the time he killed his mother.

DISCUSSION

I.

Shumey argues that the trial court erred by excluding evidence of his second police interview because the interview was relevant, by contrast, to his state of mind evidenced in his earlier September 17, 2011, police interview. He points out that the expert witnesses relied upon the second interview in forming their opinions. Shumey contends that the interview is admissible pursuant to the rule of completeness set forth in Evidence Code section 356. He asserts that preclusion of evidence of the second interview impairs his federal and California constitutional rights to present a defense and to due process of law.

For several reasons, the trial court did not err by excluding evidence of the second police interview. First, statements made at the second interview are inadmissible hearsay because they purport to explain Shumey's state of mind at the time he committed the crimes. (Evid. Code, §§ 1250, 1251; *People v. Whitt* (1990) 51 Cal.3d 620, 642-643 [Evidence Code section 1250 limited to out-of-court statements describing a relevant mental state being experienced by declarant at time the statements were made].) Shumey also did not establish that the statements were trustworthy. (Evid. Code, § 1252; *People v. Jurado* (2006) 38 Cal.4th 72, 130 [lack of trustworthiness in defendant's self-serving statements made during police interrogation].)

Second, although an expert witness may rely upon hearsay in forming his opinion, the hearsay itself may not be received as evidence. (*People v. Williams* (1988) 45 Cal.3d 1268, 1327, modified on another point by *People v. Guian* (1998) 18 Cal.4th 558, 560-561.) In any event, the expert witnesses here reviewed, considered, and

testified regarding Shumey's behavior at the second interview and the statements he made then.

Finally, evidence of the second interview is not admissible pursuant to Evidence Code section 356, the rule that serves to prevent evidence of only part of a conversation. The first and second interviews here are discrete events occurring three days apart. The second interview also occurred following Shumey's resumption of his antipsychotic medications.

Moreover, application of the ordinary rules of evidence does not impair a defendant's due process right to present a defense. (*People v. Gonzales* (2012) 54 Cal.4th 1234, 1258-1259.) Application of the hearsay rule here is not arbitrary or disproportionate to the purpose the rule is designed to serve, and does not prevent or impair Shumey's opportunity to present an insanity defense. (*Ibid.*)

II.

Shumey contends that the jury's finding of sanity violates his federal and California constitutional rights to due process of law because no reasonable trier of fact could disregard the assertedly compelling evidence of his legal insanity. He points out that the prosecution experts interviewed him but for a short time and that only Doctor Mohandie opined that he was malingering. Shumey adds that the jury was not permitted to view and hear his second police interview during which he cried when he realized that he had killed his mother.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Jackson* (2014) 58 Cal.4th 724, 749; *People v. Streeter* (2012) 54 Cal.4th 205, 241.) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*People v. Watkins* (2012) 55 Cal.4th 999, 1020.) We do not reweigh the evidence or reassess the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) We accept the logical inferences that the jury might have drawn from the

evidence although we would have concluded otherwise. (*Streeter*, at p. 241.) "If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*Albillar*, at p. 60.) This standard of review applies to a finding of fact regarding sanity. (*People v. Chavez* (2008) 160 Cal.App.4th 882, 891.)

Pursuant to California law, the test for insanity is whether the defendant was unable either to understand the nature and quality of the criminal act, or to distinguish right from wrong when the act was committed. (§ 25, subd. (b); *People v. Elmore*, *supra*, 59 Cal.4th 121, 140; *People v. DeHoyos* (2013) 57 Cal.4th 79, 118; CALCRIM No. 3450.) This standard rests upon the decision in *M'Naghten's Case* (1843) 8 Eng.Rep. 718, 722, and is referred to as the *M'Naghten* test. (*Elmore*, at p. 140.)

In determining the issue of sanity, the trier of fact evaluates the expert opinions, examines the bases for the opinions, and determines whom to believe. (*People v. Chavez*, *supra*, 160 Cal.App.4th 882, 891.) The defendant bears the burden of proving by a preponderance of the evidence that he was legally insane when he committed the crime. (§ 25, subd. (b); *People v. Mills* (2012) 55 Cal.4th 663, 672.) "Notably, a defendant may suffer from a diagnosable mental illness without being legally insane under [California law]." (*Mills*, at p. 672.)

Sufficient evidence exists of Shumey's sanity at the time he committed the crimes. In the aftermath of the shooting, Shumey acknowledged that he killed his mother because he was angry with her. He displayed goal-oriented behavior by firing a shotgun at arriving police officers to engage but not injure them. Shumey requested to leave the scene of the crime because he did not want to interact with neighbors or his father. He also stated that in view of killing his mother, he did not deserve to be fed or comfortable. Shumey was aware of his surroundings and was not delusional. The jury viewed the videotape recordings of Shumey's police interviews conducted on the day of his arrest and considered the opinions of the psychologists and psychiatrists and the bases and reasoning for those opinions. Evidence of Shumey's insanity is not of such weight that the jury could unreasonably reject it. (*People v. Duckett* (1984) 162 Cal.App.3d 1115,

1119-1123, superseded on other grounds by statute [unanimous expert opinion that defendant was insane at the time of the offense].) We do not reweigh the evidence or substitute our opinion for that of the trier of fact. (*People v. Albillar, supra*, 51 Cal.4th 47, 60; *People v. Chavez, supra*, 160 Cal.App.4th 882, 891 [jury could determine sanity where expert opinions conflicted].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Michael L. Duffy, Judge
Superior Court County of San Luis Obispo

Patricia A. Scott, under appointment by the Court of Appeal, for Defendant and Appellant.

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